

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GURR JOHNS LTD. and HARRY SMITH,

Plaintiffs,

-v-

COLLECTORIQ INC., *et al.*,

Defendants.

19-CV-9173 (JPO)

ORDER

J. PAUL OETKEN, District Judge:

Plaintiffs Gurr Johns Ltd. and Harry Smith bring this action against Defendants CollectorIQ Inc., *et al.*, alleging breaches of Defendants' contractual obligations and fiduciary duties.

This action was filed on October 3, 2019. (Dkt. No. 1.) The docket reflects that Plaintiffs have not served Defendants with the complaint. On July 30, 2020, the Court directed Plaintiffs to advise the Court in writing why they have failed to serve the summons and complaint on Defendants, or, if Defendants had been served, when and in what manner such service was made. (Dkt. No. 6.) The Court warned Plaintiffs that if no written communication were received by August 14, 2020, the Court would dismiss the case. On August 21, 2020, Plaintiffs filed a letter informing the Court that they had not served Defendants and that they, as recently as the Court's July 30, 2020 Order, "believed that a business resolution was imminent." (Dkt. No. 7.) Plaintiffs reserved the possibility that they "may need to proceed" with their action, whether in this or a separate litigation, but expressed no commitment to prosecuting the present case. (*Id.*)

Rule 4(m) of the Federal Rules of Civil Procedure requires a defendant to be served with the summons and complaint within 90 days after the complaint is filed. Rule 4(m) requires that “[i]f a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ. P. 4(m).

Accordingly, in light Plaintiffs’ failure to serve Defendants, and their uncertainty as to whether litigation would be productive at this time, this case is DISMISSED without prejudice. The Clerk is directed to close the case.

Plaintiffs are directed to serve a copy of this order by mail to Defendants.

SO ORDERED.

Dated: August 24, 2020
New York, New York



J. PAUL OETKEN
United States District Judge